HIGH COURT OF UTTARANCHAL AT- NAINITAL.

Writ Petition No. 1577(M/B) 2001
(Old No. 870 of 2000)

Rama Vision Ltd, 2km. Kichha Rudrapur Road,
Kichha, District U.S. Nagar,
Through Sri Satish Jain S/o Late Dr. R.N. Jain,
R/o Kichha, District Udham Singh Nagar. … Petitioner.

Vs.

State of Uttar Pradesh, through
Principal Secretary, Institutional Finance,
U.P. Govt. Lucknow.
And three others. … Respondents.

Sri S.K. Posti, Ad. for the petitioners,
Learned Standing Counsel (State of U.P.) for the respondents.

Dated: March 12, 2004:

Hon'ble M.M. Ghildiyal, J.
Hon'ble Rajesh Tandon, J.

Heard Sri. S.K. Posti, learned counsel for the petitioner and learned Standing Counsel for the respondents.

This writ petition has been filed by the petitioner for the issue of a writ of certiorari quashing the circular dated 5th August 2000 (annexure-2 to the writ petition) and the notice dated 23rd August 2000 issued by the respondent no. 4 in so far as it relates to the deletion of the diesel oil from the recognition certificate. The petitioner has also prayed for the issue of a mandamus restraining the respondents from taking any process in pursuance of the notice dated 23rd August 2000 issued by the respondent no. 4 and circular dated 5th August 2000 issued by the respondents. The petitioner has also prayed for the issue of a writ of mandamus directing the respondents to issue Form III-B regularly for the purchase of diesel oil to be used in diesel generator set for the running of factory of the petitioner.

The petitioner is a public limited company incorporated under the Indian Companies Act, and Central Sales Tax Act. The petitioner is manufacturing black and white television picture tubes at its factory situate at Kichha Rudrapur Road, Kichha, District U.S. Nagar. The recognition certificate has been granted under Sec. 4-B (2) authorising the petitioner to purchase the various goods, including fuels, namely diesel oil and furnace oil.

Learned Counsel for the petitioner has referred Section 4-B of U.P. Trade Tax Act which reads as under:-

Section 4-B, Special relief to certain manufacturers:

"1….

2. Where a dealer requires any goods referred to in sub-section (1) for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-state trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

Explanation:

For the purpose of this sub-section:-

(a) *goods required for use in the manufacture shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants and….."*

The petitioner has been making purchase of diesel oil against form III-B from Indian Oil Corporation Limited on payment of 2.5% as tax.

In pursuance of the circular dated 5th August 2000 issued by the Commissioner, Trade Tax, U.P. Lucknow communicated to all the oil companies, including the respondents nos. 3 & 4, the respondents nos. 3 & 4 insisted for payment of tax @ 20% for purchase of diesel oil.

Counsel for the petitioner has submitted that a bunch of writ petitions were filed in Allahabad High Court challenging the circular issued by the then Commissioner of Trade Tax, U.P. After the creation of State of Uttaranchal, the petitions relating to the State of Uttaranchal have been transferred to this Court. The Division Bench of Allahabad High Court in Civil Misc. W.P. no. 628 of 2000 M/s. Vam Organic Chemicals Ltd. v. State of U.P. and others, reported in 2003 (I) U.P. Tax Cases, page 467 has decided the controversy and has allowed the writ petition quashing the circular issued by the

Commissioner of Trade Tax U.P., the same is also the impugned circular in this writ petition.

The Division Bench of the Allahabad High Court, after detailed discussions has held that the recognition certificate cannot be amended by issuing the circular as Section 4-B sub-clause-2 by specifically mentioning the fuel which is essential for operating the machinery in the continuous process in industry like that of the petitioner. Hence the Allahabad High Court has held that the diesel oil is clearly covered by clause-a of the explanation of Section 4-B (2) of U.P. Trade Tax Act and now in Uttaranchal Trade Tax Act. The observations of the Division Bench are quoted below:-

"32 Taking a realistic view of the matter, the our opinion, the diesel generating sets installed in the factory are part and parcel of the machinery as held by the Supreme Court in Commissioner of Income Tax Vs. Mir Mohammad Ali, 53, I.T.R. 165 (vide pages 171 and 172).

33. The work 'require' has been interpreted in 21 Century Reference Dictionary, Volume II, page 701 as follows:-

"to depend on for success, fulfillment growth".

37. In the Central Excise Act also fuel oil used for production of electricity for the ultimate production and manufacture of finalized goods is treated as fuel in the manufacture or production of the finished goods vide Indian Oil Corporation Ltd. Vs. Collector Central Excise, 1985 E.L.T. 145.

38. In Indian Farmers Fertiliser Co-operative Ltd. Vs. Collector, Central Excise, 1996 (86) E.L.T. 177, the ammonia used in the effluent treatment was held to be required for use in the manufacture of urea. In Indian Copper Corporation Ltd. Vs. Commercial Tax Officer, (1965) 16 S.T.C. 259, the Supreme Court held that the locomotives and motor vehicles which are used by the Indian Copper Corporation for transporting the ore and other materials from the mine to the factory and for transporting the processed goods from the factory to the places of storage are 'goods required for use in the manufacture or processing of goods'.

39. In Commercial Tax Officer, Jaipur Vs. Rajasthan Electricity Board, 104 STC 89 the Supreme Court held that rain coats, battery cells, motor vehicles, soaps, etc. are required for use for the generation, distribution and transmission of electrical energy.

40. In Polester and Co. Ltd. Vs. Additional Commissioner of Sales Tax, A.I.R. 1978 SC 897 the question was whether sale outside Delhi would also be included in the taxable income. The Supreme Court held that the word resale

could not be limited to resale in Delhi alone. The Supreme Court went by the plain language of the statute and did not speculate about the intention of the Legislature.

41. *From, the above decisions it follows that words cannot be added to a stature and this principle will apply even with greater force to tax laws than to other statutes. Hence we cannot accept the interpretation of the respondent that the word 'directly' should be added in Section 4-B (2) before the words 'for use in the manufacture by him.'*

42. *In our opinion, the word 'fuel' will include all kinds of fuel whether in gaseous, liquid or solid form and hence it will include diesel oil fuel, RFO, natural gas, naphtha, etc."*

In the circumstances, the controversy raised in this writ petition is squarely covered by the decision of the Allahabad High Court in writ petition no. 628 of 2000 M/s. Vam Organic Chemicals Ltd. v. State of U.P. and others. Therefore, the writ petition deserves to be allowed.

In view of the aforesaid discussions, writ petition is allowed. The impugned circular dated 5th August 2000, and the notice dated 23rd August 2000 issued by the respondent no. 4 being contrary to the statutory provision of Section 4-B (2) (Explanation) for deleting diesel oil from the recognition certificate of the petitioner, are quashed. The respondents are directed to treat the diesel oil which is used by the petitioner in its generators as goods required for use in the manufacture by the petitioner as notified goods. Accordingly a mandamus is issued to the respondents to issue From III-B regularly to the petition for the purpose of diesel oil to be used in its diesel generating sets.

The petition is allowed. No order as to costs.

(Rajesh Tandon J.) **(M.M. Ghildiyal J.)**

March 12,2004:
NCM: